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Supreme Court, U.S.
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IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1996

WAYNE L. PATRICK

PETITIONER

v.

UNITED STATES OF AMERICA

RESPONDENT

ON PETITION FOR A WRIT OF CERTIORI TO
THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Wayne L. Patrick
2863 Chestnut Run Drive
Bloomfield Township, Mi. 48302
In Proper Person
Pro- Se

57 pp

QUESTIONS PRESENTED

I. Whether Congress in creating the District Court (Inferior Courts) through the Constitution of the United States Art. III § 1 has the authority under Title 5 U.S.C.A. § 551 to order Petitioner to produce books and records and et al., also to testify as set forth within the served I.R.S. summons' Title 26 U.S.C.A. § 7602

II. Whether through an Act of Congress Title 28 U.S.C.A. § 1654, and Local District Court Rule 110.4 of the Local Rules for the United States District Court Eastern District of Michigan Southern Division violates the Petitioner's First and Fifth Amendment Rights as secured by the constitution of the United States.

III. Whether through Congress in the District Courts (Inferior Courts) through the Constitution of the United States Art. III § 1 has vested the authority

in a District Court Judge pursuant to Title 5 U.S.C.A. § 551 has the authority to compel petitioner to testify against himself to enforce an I.R.S. collection summons Title 26 U.S.C.A. § 7604

IV. Whether through an Act of Congress Art. 1 § 8 Ch. 1 - The Internal Revenue Service has the authority to issue and to enforce an I.R.S. collection Summons upon an "American Citizen" your Petitioner by the direct language of the Statute Title 26 U.S.C.A. §§ 1-8024

LIST OF PARTIES TO PROCEEDINGS

IN THE COURT BELOW

This proceeding in the Supreme Court of the United States involves a Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit Civil Case No. 95-2083. The Parties for the Petitioner Wayne L. Patrick, 2863 Chestnut Run Drive, Bloomfield

Township, Michigan 48302 **"special appearance"** Proper Person, Pro-Se. For the Respondent as required by Rule when the United States of America is named as a party the Solicitor General, Department of Justice, 10th and Constitution Ave., N.W., Washington, D.C. 20530, The Director of the Internal Revenue, 477 Michigan Ave., McNamara-Bldg., Detroit, Michigan 48226. Office of the Attorney General, Department of Justice 10th & Pennsylviania, Washington, D.C. 20530, John A. Lindquist P.O. Box 55, Ben Franklin Station, Washington, D.C. 20044.

TABLE OF CONTENTS

	Page
OPINIONS BELOW.	1
QUESTIONS PRESENTED.	11,111
LIST OF PARTIES TO PROCEEDINGS. . .	111
TABLE OF AUTHORITIES.	V
JURISDICTION	1
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	2-4
STATEMENT OF THE CASE	4-8
REASON FOR GRANTING THE PETITION. .	8
ARGUMENT	
10,25CONCLUSION	
25-26	
PROOF OF SERVICE	ATTACHED

INDEX TO APPENDICES

APPENDIX A	A1, A2
APPENDIX B	B1, B2
APPENDIX C	C1-C16

TABLE OF AUTHORITIES CITED

CASES	*PAGE NUMBER*
A.H. Garland 71 U.S. 366 (1867)	15
Baird v. Arizona, 401 U.S. 1 (1971)	14
Chicago Bar Association v. Chicago Motor Club, 362 Ind. 50, 199 N. E. ( )	16
Clearfield Doctrine *Clearfield Trust Co. V. U.S. 318 U.S. 363(1942)*	22
Collins v. Marlin, 209 Pa. 388, 139 A. 122, (1927)	15
Crenshaw V. Joseph 175 Ala. 579, 57 So. 942 *Curcio V. U.S. 357 U.S. 118 (1957)*	15 13
Doe V. United States 487 U.S. 201 1988	13
Evans V. Gore 253 U.S. 254 (1920)	11
Forrester v. White, 484 U. S. 219 (1988)	13
Gibbons V. Ogden 22 U.S. 9 Wheat 188	24
Gideon v. Wainwright, 372 U. S. 335 (1963)	16
Herbert v. Louisiana, 272 U. S. 312-317(1926)	16

Hoffman V. U.S. 341 U.S. 479 (1951) *13*

Marbury v. Madison, 5 U.S. 137 (1803) *9,10,19*

Marcus V. Search Warrant of Property
367 U.S. 717 (1961) *17*

McDonald V. Commissioners of I.R.S.
323 U.S. 57 (1949) *11*

N.A.A.C.P. v. Button, 371 U.S. 415 (1963) *16*

Powell v. McCormick, 395 U.S. 486, 547 (1969) *15*

Pullock V. Farmers Loan & Trust Co.
154 U.S. 429 (1894) *8,23,24*

Rhode Island Bar Association v. Automobile Services
Association, 55 R.I. 120, 179 A. 130 ( ) 16

Rosenthal V. Bagley 450 F. Supp. 1120 (1978) 18

Schmitt v. F. W. Cook Brewing Co, 187 Ind. 623,
120 N.E. 19 (1918) *15*

Schware v. Board of Bar Examiners,
4 Wall 333, (1867) *15*

Senier v. Oregon Board of Dental Examiners, *16*
294 U. S. 608 (1935)

Smith v. California, 361 U. S. 147 (1960) *17*

Speiser V. Randall 357 U.S. 513 (1958) *17*

State ex. Rel. Crenshaw v. Joseph, 175 Ala. 579, *17*

57 So. 942 ( )

Thomas v. Collins, 323 U. S. 516 (1924) *17*

Travelers Insurance Co. v. Marshall, 124 Tex. 45, 76 S.W. 2d 1007 (1934) *15*

U.S. V. Argomaniz 925 F. 2D. 1349 (11th Cir. 1991) *14*

U.S. V. Barth 745 F.2 184 (2 Rd. Cir. 184) *13*

United States v. Bishop, 412 U.S. 346 (1973) *9*

U. S. V. Burr 309 U.S. 242 (1939) *22*

United States v. Butler, 297 U. S. 1 (1935) *8,21*

U.S. V. Edgerton 734 F. 2D. 913 (2nd cir 1984) *13*

United States V. Grable 98 F. 3D 251 (6th Cir 1996) *13,22*

U.S. V. Hatchett 862 F. 2D 1249 (6th Cir. 1988) *14*

U.S. V. Rylander 460 U.S. 752 (1983) *13*

United States v. Wrightwood Dairy Co., 315 U. S. 110 (1942) *14*

U.S. Term, Inc. v. Thornton, *15*

Wackard v. Filburn, 317 U. S. 111 (1942). *16*

Walters v. National Association of Radiation Survivors, 473 U.S. 305 (1985) *16*

Williams v. Lee Optical of Oklahoma Inc., 348 U.S. 483 (1955) *16*

Williams V. U.S. 289 U.S. 553 *11*

Winters v. New York, 333 U. S. 507 (1947) *17*

UNITED STATES CONSTITUTION *6,7,8,10,17,20,23,24*

United States Constitution, Article 1 § 1 *3,19*

United States Constitution, Article 1, § 8 ch. 18 *3,15,19*

United States Constitution, Article III Sect. 1 & 2 *2,9*

United States Constitution, Article 6 § 1, Cl.2 *21*

First Amendment United States Constitution *3,6,8,11,15,17*

Fourth Amendment United States Constitution *3,6,8,11,17*

Fifth Amendment United States Constitution *3,6,8,11,17*

STATUTES

Title 5 U.S.C.A. 551 *6,11,17*

Title 26 U.S.C.A. § 1 to 160 *4,20,22,25*

Title 26 U.S.C.A. 1-8024 *8,11*

26 U.S.C.A. §§ 6420, 6421, 6427. *5,21*

Title 26 U.S.C.A § 1654 *14,17*

Title 28 U.S.C.A. § 1254 (1) *2,22,23*

Local District Court Rules 110.4 *14,17*

1939 Tax Act *11*

MICHIGAN STATUTES

M.C.L.A. § 750.110 *5*

M.C.L.A. § 750.552 *5*

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OPINION BELOW

The opinion of the United States Court of Appeals en banc appears at Appendix A to the petition as is dated December 19, 1996

The Opinion of the United States District Court for the Sixth Circuit, Order appears at Appendix B to the Petition and is dated November 15, 1996.

The Order and Judgment of the United States District Court for the Eastern District of Michigan Southern Division appears at Appendix C to the Petition as dated September 7, 1995.

The Order of the United States District Court for the Eastern District of Michigan Southern Division denying Motion to Stay Enforcement of I.R.S. summons appears at appendix D to this Petition as dated September 27, 1995.

JURISDICTION

The date on which the United States Court of Appeals for the Sixth Circuit decided my case was November 15, 1996 and a copy appears at Appendix B.

A timely petition for rehearing en banc was denied by the United States Court of Appeals for the Sixth Circuit on the 19th of December, 1996 and a copy of the Order denying rehearing appears at Appendix A.

The Jurisdiction of this Court is involved under Title U.S.C.A. § 1254 (1)

CONSTITUTIONAL PROVISIONS, STATUTES, RULES AND REGULATIONS INVOLVED

1. The Constitution of the United States Art. III § 1 Supreme Court and Inferior Courts - Judges and compensation.

The Judicial Power of the United States, shall be vested in one Supreme Court, and such inferior courts as the Congress may from time to time ordaia and establish, - - - - Compensation which shall not be diminished during their continuation in office.

§ 2, clause 1. Subjects of Jurisdiction

The Judicial power, shall extend to all cases, in law and equity, arising under this constitution, the laws of the United

States, and treaties, made or which shall be made under their authority - - -

2. The Congress, Constitution, Article 1 § 1 "Legislative power vested in Congress. All Legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives."

2. The Congress, Constitution, Article 1, § 8 ch. 18. Enactment of law for execution of governmental posers. To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof.

3. First Amendment: Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the Right of the people peaceable to assemble and to petition the Government for a redress of grievances.

4. Fourth Amendment: The right of the people to be secure in their persons, houses, papers, and effects, against

unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

5. Fifth Amendment: Due process clause, equal protection of the law,also to have the assistance of counsel for his defense.

6. The Internal Revenue Code of 1954, including all amendments and enactments to March 1, 1984 Title 26 U.S.C.A. § 1 to 160. The Internal Revenue Code of 1954 Constitutes, Title 26 of the Official United States Code, likewise title 26, U.S.C.A. under the same arrangement and section numbering. A citation to the sections of the Internal Revenue Code is, therefore, also a citation to the sections of Title 26, United States Code and U.S.C.A.

STATEMENT OF THE CASE

In this action the Respondent, Wayne L. Patrick (Patrick), was served a collection summons by Agents of the Internal Revenue Service. When Petitioner Patrick did not respond, the United States of America (USA) moved before

the United States District Court for the Eastern District of Michigan Southern Division before District Court Judge, Barbara K. Hackett for enforcement of the Internal Revenue Service (IRS) Summons's pursuant to Title 28 U.S.C.A. § 7602. The USA, sought and was granted an ex-parte Order to show cause why the Patrick should not be ordered to comply with the IRS summons. This Order to show cause along with the Petition to enforce IRS summons was served upon Patrick after USA's agents attempted to Break and Enter Patrick's home and committed tresspass in violation of State Law M.C.L.A. § 750.110 and M.C.L.A. § 750.552 respectively. Patrick filed a response pro-se to the Petition to enforce IRS summons along with pro-se Petition to Quash IRS summons and a Motion for Quo Warranto. After a hearing the District Court granted USA's Petition to enforce IRS summons and denied Patrick's Petition to Quash IRS summons and Motion for Quo Warranto. Patrick, motioned for stay of enforcement pending an appeal which was denied. Patrick raised a question of law that the enforcement of the IRS summons

would violate his Fourth and Fifth Amendment Rights pursuant to the United States constitution. Also, the Patrick raised the issue that the District Court Judge lacked the authority as an administrative Judge to issue a final order, since, she was sworn into office pursuant to Title 5 U.S.C.A. § 551

On appeal, Patrick challenges these rulings, contending that the District Court improperly shifted the burden of proof to the Patrick prior to the establishment of a prima facie case by the USA.

Further, the district Court erred in a finding of law and fact that the Patrick had refused to comply with the IRS summons, when it was undisputed that he had challenged the validity of the IRS summons at issue, which was still pending.

Further, as the record stands Patrick has established by a competent uncontested affidavit that he was not liable for any tax and not required to preform any act.1 Therefore, the Secretary of the Treasury did not pursuant to the Statute have the authority to issue the summons at issue.

Finally, that the attempt to enforce the IRS summons upon Patrick did violate the his Fourth and Fifth Amendment Rights to the Constitution of the United States. The IRS through Title 26 U.S.C.A. §§ 1-8024 has no authority to collect direct taxes from Patrick.

The Sixth Circuit Court of Appeals, the Court affirmed the decision of the lower District Court and denied rehearing en banc. Prior to the hearing of the case on oral arguments, Patrick motioned the Three Judge Panel ex-parte to allow a lay person to come before the court and this was denied by the court.

Further, Patrick states that during the lower District Court proceeding he raised both questions of fact and law. These the Questions should have been passed upon before

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Footnote 1 - Prior to the I.R.S. issuing the summons and moving for enforcement Mr. Wayne L. Patrick filed with the Oakland County Register of Deeds a notice of citizenship as a public notice, also pursuant to the Rules of Administrative Procedure, Mr. Patrick mailed a copy of this notice of citizenship to several I.R.S. departments that was exhibited at the District Court and the Appeals Court.

the case was decided upon the merits.

Therefore your Petitioner Wayne L. Patrick moves this Court as a person that may be effected by the lower court's proceeding, and with this interest of standing has the right at law to challenge the validity of the statute *United States v. Butler*, 297 U.S. 1 (1935) and prays that this Court would decide the question of law to the case in controversy.

REASONS FOR GRANTING THE PETITION

Patrick an "American Citizen: expresses a reasonable belief after carefully consideration that there is a case in controversy, and that this controversy is the Question of Law that the Lower Courts have not passed upon or have erred in deciding this case. These include Patrick's agruments regarding the First, Fourth and Fifth Amendments to the United States Constitution. Also this case involving a constitutional question of great public importance and importance to Patrick and to the sovereign rights of the USA and Patrick. Patrick relied on prior decisions of the Supreme Court. *United States v. Butler*, supra. In this case as in *Butler,* Patrick has standing

to challenge the validity of the taxing Statute Title 26 U.S. C. A. § 1 - 8024 and the 16th Amendment can in no way justify or support the provision of the Revenue Act the constitutionality of which is now in question. *Pullock v. Farmers Loan & T. Co.*, 157 U.S. 429 (1894) Whether Congress pursuant to Article 1 § 8, Ch. 1 has the right to tax Patrick both to the nature and intended purpose of title 26 U.S.C.A. §§ 1 - 8024. In this case Patrick collaterally attack's the action and proceeding with respect to the rights of judicial review Art. III § 1, and 2 of the statute title 26 U.S.C.A. § 1 et seq. As a form of direct tax, or to sue out his Writ of error to this court to recover the taxes paid under protest Art. 1 § 8, Cl. 1.

During the lower Court proceeding Patrick raised the issue of a Fourth and Fifth Amendment violation; that was taken by statue title 26 U.S.C.A. § 1-8029. Patrick has relied upon prior decisions of this Court. *United States v. Bishop*, 412 U.S. 546 ( ) namely that the constitution of these United States is the supreme Law of the land. *Marbury v. Madison*, 5 U.S. 137 (1803). Any law that is repugnant to the Constitution

is null and void. Patrick has a right under the Constitution of the United States to be left alone, and through this Taxing law, the IRS has the power to destroy Patrick thereby violating his right to be left alone. *McCulloch v. Maryland*, 4 Wheat 316 (1819). Therefore, these laws must fall. The Supreme Court of the United States has the vested authority as the judiciary Art. III, § 1 and 2 to decide the question of law, being acts of Congress and Constitutional questions involved, and to reinstate this case.

ARGUMENT

Question No. 1

The Constitution of the United States is the supreme law of the land. Within the constitution a limited form of government was created for congress to follow. In passing laws that effect the lives of "American citizens", the congress is limited to the authority created by the Constitution. Withing Article III § 1. provides Judicial power of the United States, shall be vested in one supreme Court, and in such inferior courts as the Congress may form time to time ordain and

establish. The judges both of the supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continence of office.

Judges of the Federal courts' were separate from the Legislative Act of Congress and judges were not required to have their compensation diminished. *Evans v. Gore*, 253 U.S. 254 (1920), Taney's Letter (1863) 157 U.S. 701. *Williams v. United States*, 289 U.S. 553 ( ) With Congress passing the taxing Code and the Federal Reserve System for our money supply the salary of Federal Judges and the President of the United States are taxable. Also with amendment within the 1939 Tax act § 22 (a) places judges as doing trade and business. *McDonald v. Commissioners of Internal Revenue 323 U.S. 57 (1949)*

With this action of Congress the lower federal court have limited jurisdiction and authority to act. Also the judges of the Federal court take their office pursuant to the Administrative Procedures at Title 5 U.S.C.A. § 551. The

Authority to act is restricted to administrative procedures.

Patrick raised this issue of law. Patrick is an "American citizen" not being a person within the Tax act of Title 26 U.S.C.A. § 1-8024. The Lower Court should have ruled on the Question of Law that Patrick an "American Citizen" was not a person within the tax act of Title 26 U.S.C.A. § 1 - 8024. Further, the Patrick also raised the question of law regarding his Fourth and Fifth Amendments Rights. Namely, the information requested by the IRS was personal and private and therefore protected by the Fourth Amendment Right and the IRS summons impindged upon his Fifth Amendment right not to be compelled to testify against himself. In this matter Patrick appeared Pro Se in response to the Order to Show Cause to object to himself being individually compelled to produce records asserting his Fifth Amendment Rights. Here without any hearing in the court below as to whether or not the act of production of these records might tend to incriminate him, Patrick was ordered to produce records. It is clear that the possibility of incriminating himself was readily apparent to

Patrick since the documents requested were intended by the IRS to show income of Patrick for the years in question. A pertaint fact found by the District Court was that Patrick had not filed a tax returns for 1993 and 1994.

The Court of Appeals for the Sixth Circuit has recognized the act of production "would be sufficiently testimonial and incriminating to activate a persons fifth amendment privilege." See United States v. Grable, 98 F.3d 251 (6th Cir 1996); Doe v. United States, 487 U.S. 201, 209 (1988) By producing the records here, Patrick, could establish that they existed, they are authentic, and he knew about them which would provide a link in the chain of evidence needed to prosecute Patrick for a Federal crime. (See United States v. Barth, 745 F.2d 184 (2d Cir. 1984), Hoffman v. United States, 341 U.S. 479, 486 (1951); Curcio v. United States, 354 U.S. 118, 123-28 (1957), United States v. Rylander, 460 U.S. 752 (1983);see also United States v. Edgerton, 734 F.2d 913 (2d Cir. 1984) A more thorough examination of the claimed privilege must be conducted question by question, document

by document prior to ordering an individual, asserting his fifth amendment privilege, to produce this testimony under the threat of contempt. United States v. Hatchett, 862 F.2d 1249, 1251 (6th Cir. 1988), United States v. Argomaniz, 925 F.2d 1349 (11th Cir. 1991)

District Court Judge Barbara K. Hackett on September 7, 1995 held a hearing and erred on the question of law raised by Patrick and granted under color of law immediate enforcement of the USA's summons, effectively eliminating Patrick's right to an appeal and forced compliance under the threat of contempt abridging this right.

Question No. II.

The Petitioner sought aid and assistance of a lay person exercising his constitutional rights of counsel of his own choice under the Fifth Amendment and freedom of association under the First Amendment. This was denied to him by Court of Appeals for the Sixth Circuit under 28 U.S.C.A. § 1654 and Local Rule 110.4. The American bar is only an organization, like the State bar of Michigan *Baird v. Arizona*, 401 U.S. 1

(1971) The right to practice law is not by grace, but of right. *U.S. Term, Inc. v. Thornton*, 114 S.Ct. 2703 (1994) at and the issue in *Powell v. McCormick*, 395 U.S. 486, 547 (1969) The right to be represented by men of their own choice not by rule or policy. The Court should have questioned the lay person (Douglas Bennett) *Schware v. Board of Bar Examiners*, 4 Wall 333 (1867). The Constitution is not only the direct basic expression of the sovereign will of the People. *Marybury v. Madison*, supra It is also the absolute rule of action and decision for all departments and officers of government, with respect to all matters covered by it, and must control as it is written. Article 1 § 8 Ch. 18 Enactment of laws for execution of governmental powers, until it is charged by the authority which established it. *State ex. Rel. Crenshaw v. Joseph*, 175 Ala. 579, 57 So. 942,( ) *Schmitt v. F. W. Cook Brewing Co*, 187 Ind. 623, 120 N.E. 19 (1918); *Collins v. Marlin*, 209 Pa. 388, 139 A. 122 (1927); *Travelers Insurance Co. v. Marshall*, 124 Tex. 45, 76 S.W. 2d 1007 (1934); *Ex-Parte In the matter of A. H. Garland*, 71 U.S. 366 (1867) The Right of Assembly is a

guaranteed right by the Constitution of the United States and is the Supreme law of the Land. The Language is unqualified on its face (First Amendment) and there is no mention that Petitioner must have an attorney, an officer of the Court, that first owes a duty to the Court.

Undoubtedly, the American Bar has broad powers to regulate the practice of law within the Federal Legislative Courts. This control cannot interfere or ignore the rights of individuals secured by the Constitution. *N.A.A.C.P. v. Buttons*, supra; *Gideon v. Wainwright*, 372 U. S. 335 (1963) The right to petition the Courts cannot be handicapped. *Chicago Bar Association v. Chicago Motor Club*, 362 Ind. 50, 199 N. E. 1 (1935) , *Rhode Island Bar Association v. Automobile Services Association*, 55 R.I. 120, 179 A. 130 ( ) *Senier v. Oregon State Board of Dental Examiners*, 294 U. S. 608 (1935); *Williams v. Lee Optical of Oklahoma Inc.*, 348 U.S. 483 (1955) When a Legislature sets out to regulate activity which arguably falls within the reach of fundamental Constitutional Rights, the prohibitions against vagueness tightens and the legislature is

required to draft the penal statute with particularity and precision. *Buttons* at p. 417. *Herbert v. Louisiana*, 272 U. S. 312-317(1926); *Smith v. California*, 361 U. S. 147, 151 (1960) *Winters v. New York*, 333 U. S. 507, 509, 510, 516, 518 (1947) It should make no difference that this is not a criminal case but of the danger of a First Amendment violation. *Marcus v. Search Warrant of Property*, 367 U. S. 717, 733(1961) *Smith v. California*, supra (361 U.S. at 151-154); *Speiser v. Randall*, 357 U. S. 513, 526 (1958); *Thomas v. Collins*, 323 U.S. 516, 537 (1924). The Constitution of the United States is still the supreme law of the land, and Congress has the authority to legislative law. Art. 1 § 8, Ch. 18, and this case Title 28 U.S.C.A. § 1654, and Local Court Rule 110.1 clearly violates the First Amendment, and is in conflict with the United States Constitution.

Question III.

Patrick does not challange the authority under Article III of the Constitution of the United States to create inferior courts (District Courts). The challange is whether Barbara K. Hackett

as a District Court Judge acting pursuant to Title 5 U.S.C.A. § 551. The purpose of Daministravie procedure Act to introduce greater uniformity of procedure and standardization of administrative practice amoung diverse agencies whose [customs] have departed widely from each other and more [fundamentally] to curtail and change practice of embodying in one person or agency duties of prosecutor and judge. Does not give to a District Court Judge the power to exceed her authority. The United States of America could be considered a "party" but the word "a party" could include Patrick an actual litigation not being an agency or hyupothetical party. If in this case as the case proceeded before the District Court, once the Question of Law and rights were raised by Patrick (First, Fourth and Fifth) the District Court Judge should have passed on the Question of Law. (See *Rosenthal v. Bagley*, 450 F.Supp 1120 (1978). The hearing conducted by Judge Hackett did not satisfy the due process clause, and that there was no way the District Court Judge could enforce the IRS summons as a final order for enforcement. The Supreme Court is the only Court

vested with the power to decide the Question of Law, therefore Patrick reasonably believes that the lower court erred and with the Question of Law still in controversy and unsettled moves before this Article III Court the judiciary to settle the Question of Law.

Question IV.

Congress has the authority of Congress is vested with the Legislative powers Art. 1 § 1 United States Constutition which shall consist of a senate and House of Representatives, to pass laws to lay and collect taxes. Art. 1 § 1 Ch. 8 United States Constitution. United States Constitution Art. 4 § 4 Ch. 1 Full Faith and credit (Preamble of the Constitution of the United States *McCulloch v. Maryland*, 17 U.S. 406 (1819) creates a right to establish corporations as the means for government to function. These Corporations are an independent foreign sovereignties. Brought before the Courts whether Title 26 U.S.C.A. Is **"necessary and proper"** within the power of authority Art. 1 § 8 Ch. 1. The right of Congress to lay and collect taxes, in this case as in the *McCulloch v. Maryland*,

supra at p 347. "A right to tax is a right to destroy" is the whole amount of this argument of the establish taxing statutes Title 26 U.S.C.A. §§ 1 et . seq. If the Constitution of the Untied States guarantees the Petitioner the rights of liberty and to hold property then, the IRS is without the authority to issue a Collection Summons or move for enforcement. Of the summons through non Judicial proceeding by administrative pr edures to destroy the property of the petitioner Patrick. This action by the IRS is not for enforce of capital or for profits received by investments, the enforcement action by the I.R.S. in or an exchange of compensation received by petitioner's labor which is not income derived by capital gain or profits by investments. Your Petitioner would further argue that the Constitution of the United States argue that the Constitution of the United States is a contract, the founding fathers of the country signed this contract, with the agreement that the government by the passing of laws violate this contract *McCulloch* at p. 351 which shall impair the obligation of the contract.

Further questioning the right of Congress to extend exclusive power of legislative authority beyond that of the district of Columbia and the corporate states or possessions or territories as set forth within Title 26 U.S.C.A. § 7621 for the purpose of laying and collecting taxes would be repugnant to the supreme laws of the land Article 6 § 1 Ch. 2 of the Constitution of the United States and therefore would be void. By the Corporation. In 1816, all branches of the Legislature concurred in establishing the Corporation, whose chartered rights are now in judgment before the court with the petition challenges the validity of the I.R.S. to proceed . *Untied States v. Butler, 297 U.S.* 1 (1935) The Petitioner never disputed the power of congress to make laws to lay and collect taxes for the purpose of payment of debt both public and expenses of the Government. But with the passing of the Federal Reserve Act the United States of America would be no longer on a Gold and Silver standard and with Amendments to the tax act being passed form 1913, 1934, 1939, and the revised tax act of 1954 were not a Nation of Credit, and citing the Clearfield doctrine.

Clearfield Trust Co. V. United States, 318 U.S. 363 (1942)

> For the purposes of suit, such corporations (Government involved in private corporate commercial paper- Federal reserve Notes) and individuals are regarded as entities entirely separate for Government.

This argument both at **"law and fact"** on Question whether corporation created (by Congress **"sub-silento"**) as agency of, or whose stock is owed in whole or in part by, the United States the governmental immunity from suits , but "when Government enters the World of Commerce, they are subject to the same burdens as any private firm or corporation." Once the corporation brings suit in its own name the corporation as consented to sue and be sued that has been given by congress *United States v Burr*, 309 U.S. 242 (1939) The Petitioner moves's this Court that "All persons are presumed to know the law. If any person acts' under any unconstitutional statutes he does so at his own peril. He (or she) must take the consequences."

The Statute in question to its validity *United States v. Butler*. Supra Title 26 U.S.C.A. § 1 et. Seq. That the tax act of

1954 as a manifest repugnancy between the power of congress to pass tax law and the Constitution of the United States that guarantees to the "**American citizen**" the rights of liberty, the right to be left alone, and must important the right to hold and keep his property with his property being destroyed by direct taxes on his property. Congress is with out the authority to pull down at its pleasure, and the Petitioner not being to respond by the government and those individual taking this action be shielded claiming government immunity.

This Taxing statute Title 26 U.S.C.A. § 1 is for a political purpose. The collection by the IRS on behalf of the Department of the Treasury and ultimately for the private Federal Reserve Bank Corporation. This act of congress must comply with the "**supremacy clause**" of the Constitution of the United States Art. 6 that when questioned the Court must decide whether this statute Title 26 U.S.C.A. § 1 is within the authority of Congress.

That with this Court's ruling in *Pollock v. Farmers Loan and Trust Company*, 158 U.S. 1108 (1894) The Court heard arguments Taxes on personal Property, or on the income of

personal property, are likewise direct taxes upon April 8, 1895 the Court announced its decision in each case that " the decree of the Circuit Court is reversed and the cause remanded with directions to enter a decree in favor of the complainant in respect only of the voluntary payment of the tax on the income of the Real Estate of the Defendant Company, and of that which it holds in trust, and on the income from the Municipal bonds owned or so held by it."

The words of the Constitution are to be taken in their obvious sense, and to have a reasonable construction. In *Gibbons v. Ogden*, 22 U.S. 9 Wheat 188 ( ) Mr. Chief justice Marshall with his usual teliclity said "as men whose intentions require no concealment, generally employ the words which most directly and aptly express the ideas they intend to convey, the enlightened patriots who framed our Constitution, and the people who adopted it, must be understood to have employed words in their natural sense, and to have intended what they have said. Pollock, supra at 618, 619

Throughout, the Lower Court Proceeding and before

the USA took an action against Patrick he filed with the Oakland County Register of Deeds a Public notice of citizenship as exhibited withing the lower court proceeding and sent to Department of Treasury and the I.R.S. copy of this public notice of Citizenship as an "American Citizen" he wishes not to volunteer to the direct tax posed within Title 26 U.S.C.A. § 1. Also that the assessment was from compensation, not from gains or profits *Pollock*, supra at p. 639

CONCLUSION

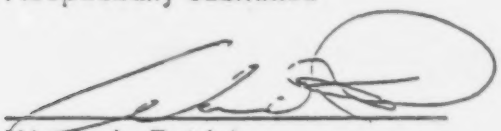
For these reasons your Petitioner believes that the Lower Courts erred and therefore brings this Petition before this Court for review and prays that this Court grant Certiorari.

PRAYER FOR RELIEF

WHEREFORE your Petition Wayne L. Patrick comes before this Court and like those of the past look to this Court to decide the controversy of law in Question to its validity. As your petitioner stated this very important to your Petitioner by the Constitution fact that sever right, immunities and Liberties may be effected by the ruling of this court Prior to the filing of

this petition for Writ of Certiorari. Your Petitioner carefully review prior decisions of this court when the question of law was raised, and in the *Pollock*, case, the *Butler* as cases and several other cases the Petitioner cited. The Lower Court decision do not conform to prior ruling of supreme Court. For this reason your petitioner prays that this Honorable Supreme Court would grant this Petition for Writ of Certiorari, that Justice best be served and that the Question of law be decided by this Court.

Respectfully submitted



Wayne L. Patrick
2863 Chestnut Run Drive
Bloomfield Township., Mi. 48302
In Proper Person
Pro-Se

APPENDIX A
No. 95-2083
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
DEC 19, 1996
LEONARD GREEN

UNITED STATES OF AMERICA)
)
Plaintiff-Appellee)
)
v.) ORDER
)
WAYNE L. PATRICK)
)
Defendant-Appellant.)

BEFORE: LIVELY, BOGGS, and NORRIS, Circuit Judges.

The court having received a petition for rehearing en banc, and the petition having been circulated not only to the original panel members but also to all other active judges of this court, and no judge of this court having requested a vote on the suggestion for rehearing en banc, the petition for rehearing has been referred to the original panel.

The panel has further reviewed the petition for

rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. Accordingly, the petition is denied.

ENTERED BY ORDER OF THE COURT

/S/ Leonard Green

Leonard Green, Clerk

APPENDIX B

NOT RECOMMENDED FOR PUBLICATION

No. 95-2083

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

FILED

OCT 17, 1996

LEONARD GREEN, Clerk

UNITED STATES OF AMERICA	)
	)ON APPEAL FROM
	)THE UNITED
Plaintiff-Appellee	) STATES DISTRICT
	)COURT FOR THE
	)EASTERN DISTRICT
v.	)OFMICHIGAN
	)MEMORANDUM
	)OPINION
WAYNE L. PATRICK	)
	)
Defendant-Appellant.	)

BEFORE: LIVELY, BOGGS, and NORRIS, Circuit Judges.

PER CURIAM. Wayne L. Patrick appeals from an order of the district court that granted the petition of the Internal Revenue Service to enforce its summons.

Having had the benefit of oral argument, and having carefully considered the record on appeal and the

briefs of the parties, we are not persuaded that the district court erred in granting the petition.

As the reasons why the petition should be granted have been articulated by the district court, the issuance of a full written opinion by this court would be duplicative and serve no useful purpose. Accordingly, the order of the district court is **affirmed** upon the reasoning set out by that court in its Order dated September 11, 1995.

APPENDIX C
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATE OF AMERICA
Petitioner

Civil No. 95-cv-72816
Hon. BARBARA K. HACKETT

v.

WAYNE L. PATRICK
Respondent

_____/

ORDER GRANTING PETITION TO ENFORCE INTERNAL REVENUE SERVICE SUMMONS, DENYING RESPONDENT'S MOTION TO QUASH, AND DENYING RESPONDENT'S MOTION FOR QUO WARRANTO

The above-captioned matter is before the court on a petition filed pursuant to 26 U.S.C. §§ 7402(b) and 7604(a) by the United States (USA) to judicially enforce and Internal Revenue Service (IRS) summons. Respondent-taxpayer Wayne Patrick was served with an IRS summons on March 1, 1995, but has failed to appear in response to the summons. Thus, the court ordered respondent to show cause why he should not comply with

and obey the summons served upon him and each requirement thereof. Respondent answered the petition and filed motions to quash and for quo warranto. On Thursday, September 7, 1995, a hearing was held on these matters. For the reasons stated at the hearing and in this order, the petition to enforce the IRS summons shall be granted, and the respondent's motions to quash and for quo warranto shall be denied.

I. FACTS

Brenda J. Leonard is a revenue officer OF THE Collection Division of the IRS and is authorized to utilize IRS summonses. Officer Leonard was assigned to obtain the unpaid assessed federal tax liabilities of respondent for the tax years 1990 and 1991, and to secure the federal income tax returns for respondent which he failed to file for the years 1992 and 1993. Thus, on March 1, 1995, Officer Leonard served an IRS summons directing respondent Wayne Patrick to appear before her on March

13, 1995, at 9:00 a.m. for examination and to produce books, records, documents and other data. The testimony and other information demanded by the summons are not already in the possession of the IRS and are sought to determine the correct federal tax liabilities of Wayne Patrick for the years 1992 and 1993. There is no "Justice Department referral" in effect with respect to respondents for the years under investigation.

However, respondent failed to appear at the stated time and has not responded to the summons as of this date. On March 10, 1995, respondent filed a complaint against Officer Leonard and her manager in the nature of tort with respect to the issuance and service of the summons. (See Patrick v. Owczarek, et al., 95-70969 (J. Taylor)). The USA intervened as a defendant in that action and has filed a motion to dismiss, which has not yet been decided.

On July 13, 1995, the USA filed the present petition

to enforce the summons and for an order to show cause why the petition should not be enforced. Then, on July 14, 1995, an order was entered for respondent to appear before the court on August 24, 1995, to show cause why he should not be compelled to obey the IRS summons.

Next, respondent a pro se answer to the petition, along with motions to quash the summons and for quo warranto. In his response, respondent claimed to be ill, but never formally requested and adjournment of his hearing date, Subsequently, the government responded to the motions to quash and for quo warranto.

On the original day scheduled for respondent's hearing, Attorney Douglas McKinney filed an appearance on behalf of respondent, and requested an adjournment due to respondent's illness. The court granted and adjournment until September 7, 1995, at which time a hearing took place with respondent present.

II. RELEVANT LAW

To obtain enforcement of an IRS summons, the government must establish a prima facie case by demonstrating that: 1) the investigation has a legitimate purpose; 2) the summoned materials are relevant to the investigation; 3) the information sought is not already within the IRS's possession; and 4) the IRS has followed the procedural steps outlined in 26 U.S.C. § 7603. United States v. Powell, 379 U.S. 48, 57-59 (1964); United States v. Will, 671 F.2d 963, 966 (6th Cir. 1982). These elements are generally shown by the submission of an affidavit of the agent who issued the summons and who is seeking enforcement. Will, 671 F.2d at 966. Once the government has established a prima facie case for enforcement of a summons, the burden shifts to the taxpayer to demonstrate that enforcement would be an abuse of the court's process (such as to harass the taxpayer or to put pressure on him to settle a collateral dispute, or for any other purpose reflecting on the good

faith of the particular investigation). Id. At 966-67.

An enforcement proceeding is designed to be summary in nature and conducted expeditiously, so the court has the power to limit discovery and to limit evidentiary hearings. Id. at 968. To that extent, the taxpayer must make a preliminary and substantial demonstration of abuse before the court will permit any discovery or allow the action to proceed to a full-blown evidentiary hearing. Id. In order to justify an evidentiary hearing on the issue of enforceability, :[a] party opposing an IRS summons must come forward with specific facts, under oath, demonstrating that a triable issue exists on a legally sufficient defense." Pylar v. United States, 835 F. Supp. 1033, 1035 (W.D. Mich. 1993) (citing Goodwin v. United States, 564 F. Supp. 1209, 1215 (D. Del. 1983))

III. DISCUSSION

In this case, the government has submitted Revenue Officer Brenda J. Leonard's affidavit attesting to

the propriety of the IRS summons she issued. This declaration is sufficient to establish a prima facie case for enforcement of the summons. Powell, 379 U.S. at 58. Thus, the burden shifts to respondent to preliminarily demonstrate that the enforcement would be a substantial abuse of the court's process.

In defense of his position, respondent argues as follows:

1. The present action is barred by Fed. R.Civ.P. 13(a), Compulsory Counterclaims, because the government's attempt to enforce the summons arises out of the same transaction or occurrence as is the subject of a prior existing litigation (respondent's tort case before Judge Anna Diggs Taylor);

2. Revenue Officer Brenda J. Leonard has not been proven by competent evidence to be a Revenue Officer, nor has she been duly authorized to issue the summons in dispute;

3 Enforcement of the summons would impinge upon respondent's constitutional rights under the Fourth and Fifth Amendments;

4. Enforcement of the summons would abuse the court's process;

5. The information sought by the IRS is not relevant.

A.

As to his first argument, respondent claims that the purpose of his complaint in Judge Taylor's case was to object to the validity of the summons, and that the instant action also seeks to have the validity of the summons determined. Thus, respondent contends that the USA should have sought enforcement in the first action and is sidestepping Judge Taylor's jurisdiction by bringing the present action.

The USA responds that its petition to enforce does not stem from the same transaction and occurrence giving rise to respondent's first suit. In the first case, respondent challenges the manner in which the summons was served upon him, whereas the present proceeding arises from respondent's failure to comply with the summons. The court agrees with the government's position.

In any event, the USA was not required to file a counterclaim in the first suit because Federal Rule of Civil Procedure 13(a) requires a compulsory counterclaim be stated only "at the time of serving a pleading," and the government did not file a pleading in Judge Taylor's case, but only a motion to dismiss. In United States v. Snider, 779 F.2d 1151, 1157 (6th Cir. 1985), the Sixth Circuit held that a party who merely moves to dismiss a complaint does no lose its compulsory counterclaim because:

> Until the motion to dismiss is ruled upon it is not known whether the plaintiff has a claim. Without a valid claim there can be no counterclaim, compulsory or permissive. [Also, a] motion to dismiss . . . is not a pleading as defined in Rule 7. There is no reason for a party to file a pleading while a motion to dismiss is pending.

Thus, the government was never required to serve a pleading in the first action, Rule 13(a) was not triggered, and this proceeding is not barred for the government's failure to raise the issue of enforcement in Judge Taylor's case.

B.

Next, respondent complains that he cannot verify or substantiate that Revenue Officer Leonard is who she says she is, that she is a revenue officer, or that she is authorized to issue the summons in question. The government responds that Officer Leonard's declaration was made pursuant to 28 U.S.C. § 1746 under penalty of perjury and attests to the fact that she is a duly commissioned revenue officer of the Collection Division of the IRS. Furthermore, respondent adduces no evidence to contradict the declaration. The court determines that mere doubts and suppositions are legally insufficient to create a genuine controversy as to those facts, so respondent's argument fails.

In addition, respondent's motion for quo warranto pursuant to Fed. R. Civ. P. 81(f) to test whether Officer Leonard is in fact employed by the IRS as a revenue officer is contrary to well-established law. As stated by

the Supreme Court in Johnson v. Manhattan Railway Co., 289 U.S. 479, 502 (1932):

> Quo warranto is addressed to preventing a continued exercise of authority unlawfully asserted, not a correction of what already has been done under it or to a vindication of private rights. It is an extraordinary proceeding, prerogative in nature, and in this instance could have been brought by the United States, and by it only, for there is no statute delegating to an individual the right to resort to it. Besides, such a proceeding, to reach its objective in a situation like that here disclosed, must be brought against the person who is charged with exercising an office or authority without lawful right.

C.

Respondent argues that if he turns over the records sought in the summons, the government will surely commence civil or criminal proceedings against him. Thus, he argues, ordering him to comply with the summons would be tantamount to compelling him to testify against himself in violation of the Fifth Amendment and would also violate the Fourth Amendment's protection against unreasonable searches and seizures.

On the other hand, the government provides well-established law holding that the mere issuance and service of a summons does not violate the search and seizure provisions of the Fourth Amendment. See, eg., United States v. Powell, 379 U.S. 48 (1964). In addition, the government contends that a "blanket assertion of Fifth Amendment Privilege is insufficient." In re Monganroth, 718 F.2d 161, 167 (6th Cir. 1983). A Fifth Amendment privilege must be asserted with respect to each interrogatory for which protection is sought, and the claimant must establish a "nexus: for each Interrogatory showing that substantial hazards of self-incrimination are present due to the information sought. United States v. Hatchett, 862 F.2d 1249 (6th Cir. 1988). Thus, the government argues that because respondent has failed to appear before the IRS to respond to any questions, his blanket Fifth Amendment argument must fail. For the reasons well-stated by the government, the court finds

respondent's claim to be without merit.

D.

Respondent explains that he recently underwent extensive cancer surgery (July 1995) , and that forcing a man in his condition to comply with the IRS summons would abuse this court's process. The government responds that a precondition to the validity of an IRS summons is that the summons be issued in good faith, and that the taxpayers have a heavy burden to show that a summons was not issued for a proper purpose. United States v. LaSalle Nat'l Bank, 437 U.S. 298, 316 (1978). In this case, the bare allegations of bad faith do not meet his heavy burden, and his factual allegation are patently without merit.

E.

Finally, respondent claims that the information sought in the summons is not relevant because

respondent is not a citizen subject to federal income tax, or that, in any event, he did not have sufficient income in 1992 or 1993 to trigger the return filing requirement. The government responds that under the Internal Revenue code, 26 U.S.C. § 7602, the Commissioner has the authority to issue a summons for information or documents which may be relevant in determining the correctness of a return in order to determine a taxpayer's tax liability. In United States v. Arthur Young & Co., 465 U.S. 805, 814 (1984), the Supreme Court specifically adopted a relevance standard in summons enforcement cases: The government need only show that the summoned information "might throw light upon" the tax liabilities under investigation.

In this case, the Commissioner clearly has a legitimate purpose in investigating to determine whether respondent properly failed to file a federal tax return. Thus, the summoned date may be relevant, and the

summons will be summarily enforced. Additionally, as to respondent's claim that a Michigan citizen is not subject to federal tax, the Sixth Circuit has recently stated that the argument is "completely without merit and patently frivolous." United States v. Mundt, 29 F.3d 233, 237 (6th Cir. 1994).

IV. CONCLUSION

The affidavit of Revenue Officer Brenda Leonard submitted by the government is sufficient to establish a prima facie case for enforcement of the IRS summons in this case. On the other hand, respondent has produced no specific evidence creating a genuine issue as to any material defense to enforcement of the summons. Taking the record as a whole, the court concludes that respondent has not met his burden of showing by specific evidence that enforcement of the IRS summons would abuse the court's process, as none of his arguments are

supported by competent evidence Accordingly,

IT IS ORDERED that petitioner's petition to enforce internal revenue service summons hereby is GRANTED.

IT IS FURTHER ORDERED that respondent's motion to quash hereby is DENIED.

IT IS FURTHER ORDERED that respondent's motion for quo warranto hereby is DENIED.

\SIGNED\
BARBARA K. HACKETT
United States District Judge

Dated : September 11, 1995